HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL NO. 336 OF 2006

BETWEEN

Nishhi Agarwal & another

……Appellants

And

The Government of Andhra Pradesh, rep. by its Principal Secretary, Municipal Administration & Urban Development Department, Secretariat Buildings, Hyderabad & others

……**Respondents**

:: JUDGMENT ::

Counsel for the Appellants : Shri E. Madan Mohan Rao

Counsel for Respondent No.1 : Government Pleader for

Municipal Administration &

Urban Development

Counsel for Respondent No.2 : Shri T. Niranjan Reddy

Counsel for Respondent No.3 : Shri P. Raja Gopala Rao

Dated: 28.03.2006

Per G.S. SINGHVI, CJ

This appeal under Clause 15 of the Letters Patent is a typical example of bureaucratic apathy in matters of immense public importance which results in frustration of projects undertaken by the State and its functionaries for the benefit of the people living in urban as well as rural areas.

In order to meet with the challenge posed by the rapid growth of the city of Hyderabad and consequential traffic congestion, the Government of Andhra Pradesh has decided to construct Outer Ring Road of more than 150 kilo meters. The implementation of this project necessitated acquisition of large tracts of land. The land owners, who were sought to be deprived of their property, naturally sought intervention of the Court by filing writ petitions under Article 226 of the Constitution of India.

The appellants also filed Writ Petition No. 26222 of 2005 questioning notification dated 24.11.2005 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'). They pleaded that they are owners of land bearing Survey Nos. 14, 40 and 41 admeasuring Ac.1.17 guntas and Ac. 0.23 guntas respectively situated at Tondupally village, Shamshabad mandal, Ranga Reddy district and that even though there is no emergency warranting invoking of Section 17(4) of the Act, the respondents have invoked the urgency clause and dispensed with the enquiry contemplated under Section 5A of the Act.

The writ petition filed by the appellants was heard by the learned Single Judge along with Writ Petition Nos. 27091 and 27987 of 2005. He held that there existed sufficient material on the basis of which the competent authority could form a bona fide opinion for invoking the urgency clause contained in Section 17(4) of the Act. The learned Single Judge further held that notification issued under Section 4(1) of the Act does not suffer from any legal infirmity. Accordingly, he dismissed all the writ petitions.

The petitioners of Writ Petition Nos. 27901 and 27987 of 2005 carried the matter before the Division Bench. Writ Appeal Nos. 240 and 241 of 2006 filed by them were disposed of by the Division Bench on 14.03.2006 by directing the competent authority to hold enquiry under Section 5-A of the Act. The operative

part of the order passed by the Division Bench reads as under:

> "Keeping in view, the submissions made at the bar by both sides, without going into the merits of the case or of the Judgment passed by the learned single Judge, we pass the following order:
>
> a. that the notification dispensing with the enquiry under Section5-A of the Act and also the declaration under Section 6 of the Act are set aside; and
>
> b. that the appellants are directed to file their objections in terms of Section 5-A of the Act within ten days from today; and
>
> c. that the Land Acquisition Officer is not required to issue any fresh notice as only the present appellants are aggrieved of dispensing with the enquiry; and
>
> d. that if the objections are filed by the appellants before the Land Acquisition Officer within the time stipulated, the Land Acquisition Officer may also personally hear all those objectors, who want to be personally heard, and in any case, pass final orders in terms of Section 5-A of the Act within two weeks from today.
>
> The writ appeals are, accordingly, disposed of and the common order of the learned single Judge in W.P.No.27987 of 2005 and batch, dated 10.02.2006 is modified to the extent mentioned above."

Learned counsel for the parties say that this appeal may be disposed of in similar terms.

In view of the statement made by the learned counsel, we do not consider it necessary to critically examine the correctness of the reasons recorded by the learned Single Judge for refusing to entertain the appellants' challenge to notification dated 24.11.2005 issued by respondent No.3, and dispose of the appeal in the following terms:

1. the decision of respondent No.3 to dispense with enquiry envisaged under Section 5-A of the Act is declared as illegal and quashed;

2. within ten days from today, the appellants should file their objections in terms of Section 5-A of the Act; and

3. the competent authority shall hear the parties and pass final order in terms of Section 5-A of the Act within a period of two weeks from today.

The appeal is disposed of in the manner indicated above.

While disposing of the appeal, we deem it proper to take serious note of the casual manner in which respondent No.3 issued notification dated 24.11.2005. In para No.3 of the notification, a mention has been made regarding appointment of the Special Deputy Collector (Land Acquisition), Unit-I, Outer Ring Road Project, Hyderabad Urban Development Authority, Hyderabad to perform the functions of Collector under Section 5-A of the Act. In the next paragraph, the urgency clause contained in Section 17(4) of the Act has been invoked and enquiry under Section 5-A of the Act has been dispensed with. It is difficult to comprehend as to how an officer of the rank of Project Director could incorporate two contradictory paragraphs in the same notification. We are sure that if the officer had bothered to apply his mind to the notification before appending his signature, a lot of time of the learned Single Judge would have been saved who had to record a detailed order running into 28 pages for dealing and disposing the writ petition filed by the appellants and other similarly situated persons.

We also deem it proper to issue a strong reminder to the officer concerned that his failure to deal with the matter relating to acquisition of land for Outer Ring Road will be viewed seriously by the Court and if similar lapses are repeated in future, he may have to suffer consequences. The officer concerned must realize the importance of the project and apply his mind before passing orders. If there is any delay in the passing of appropriate order under Section 5-A of the Act, the Government shall have to take strong measures which may also involve replacement of the officer concerned.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

28.03.2006

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